

(916) 323-7712



July 14, 1982

Ms. Irma Lindh  
Director Berkeley Town House  
2550 Dana Street  
Berkeley, CA 94704

Dear Ms. Lindh:

This is in response to your letter of June 1, 1982, to Mr. Glenn Rigby regarding the classification of the Berkeley Town House as a stock cooperative and the separate assessment of the individual interests therein for property tax purposes pursuant to Revenue and Taxation Code, Section 2138.7.

A "stock cooperative," as defined in Section 11003.2 of the Business and Professions Code, is a corporation which is formed or availed of primarily for the purpose of holding title to improved real property, either in fee simple or for a term for years. An essential element is that all or substantially all of the corporation's shareholders receive a right of exclusive occupancy of a portion of the real property, title to which is held by the corporation. The right of occupancy is transferable only concurrently with the transfer of the share(s) of stock or membership certificate in the corporation held by the person having a right of occupancy. After reviewing the documents you sent, we are of the opinion that the Berkeley Town House is a corporation which is a stock cooperative under the foregoing definition.

Under current law, stock cooperatives having two or more shareholders are within the definition of a "subdivision" under the Subdivided Lands Act (Business and Professions Code, Sections 11000 - 11200); further, a security consisting of a parcel of land in a subdivision is exempt from the corporate securities law. (Corporations Code, Section 25100 (f)). In view of a former uncertainty as to whether these projects required both a public report by the real estate commissioner and a permit from the corporations commissioner, the Legislature expressly declared its intent to validate the good faith activities of those who, prior to 1965, complied with one of these requirements, but not the other (Chapter 607, Statutes of 1965, Sections 4,5). Further, the subdivision law does not apply to the formation of a stock cooperative if all of the shares or other interests were sold or issued, prior to a

July 14, 1982

specified date in 1965, pursuant to and in accordance with a permit issued by the corporations commissioner (Business and Professions Code, Section 11004.8).

Occupants of a stock cooperative project own stock or shares in the title-holding corporation and occupy their respective residences or apartments by virtue of a lease. Management of the title-holding entity is generally exercised by a board of directors composed of and elected by the tenant "owners." Thus, as a practical matter, the tenant-shareholder exercises substantial "ownership" dominion over his unit and his rights are in excess of those of a mere lessee. In this regard, the California Supreme Court has held that an individual's ownership of such a cooperative apartment is a valuable interest in real property, since, although the corporation owns the legal title, the entire equitable interest is distributed proportionately among the owners of the apartments. (Estate of Pitts, 218 Cal. 184.)

The Legislature has recognized that shareholders of stock cooperative apartments have a present, beneficial interest in real property which is substantially equivalent to a fee interest for purposes of determining whether a "change in ownership" occurs under Proposition 13 when shares of stock are transferred. Specifically, in this regard, Section 62(h) of the Revenue and Taxation Code provides that a change in ownership includes "the transfer of stock of a cooperative housing corporation, as defined in Section 17265, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such property, or a portion thereof." Also, Section 65.1 provides that if a unit within a cooperative housing corporation changes ownership, then only the unit transferred and the share in the common area reserved as an appurtenance of such unit shall be reappraised.

Prior to January 1, 1981, the county assessor was not required to separately assess the individual interests in stock cooperative corporations. Rather, a single tax bill was sent to each project and it was the responsibility of the project organization to divide up the tax bill among the shareholders. Revenue and Taxation Code, Section 2138.7, effective January 1, 1981, provides that whenever a community apartment project, stock cooperative, limited equity housing cooperative, or other housing cooperative requests a separate assessment, the assessor shall separately assess the individual interests held by the owners of the project or the shareholders of the corporation if certain conditions are met. According to the Assembly Revenue and Taxation Committee analysis, the apparent

July 14, 1982

purpose of this section was to end confusion among assessors and managers of these types of projects about how reassessment would occur in accordance with Proposition 13 when an interest in a single unit changed ownership. The section was also intended to eliminate disputes between project managers and unit owners over the allocation of property taxes, and to preclude situations in which all owners in a project would be liable for taxes and penalties if one owner did not pay his share.

I hope this is responsive to your inquiry. If we may be of further assistance to you in this matter, please do not hesitate to contact this office.

We are returning the attached documents for your files.

Very truly yours,

Margaret S. Shedd  
Tax Counsel

MSS:jlh

Attachments

cc: Mr. Dean Lewis, Supervising Appraiser  
Alameda County Assessor's Office

bc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Legal Section